

JUL 16 2007

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2007 JUL 16 P 1:03

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

MUR 5900)

COBURN FOR SENATE)

CASE CLOSURE UNDER THE

ENFORCEMENT PRIORITY SYSTEM

SENSITIVE

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, complaint-generated matters involving issues that have been previously resolved through prior action taken by the Commission are deemed inappropriate for review by the Alternative Dispute Resolution Office and do not necessitate Enforcement action. Accordingly, these types of matters are forwarded to the Commission with a recommendation for dismissal.

In this case, the complainant, the Executive Director of Citizens for Responsibility and Ethics in Washington ("CREW"), provided an Audit Report approved by the Commission on January 9, 2007 (see attached) as the basis for its complaint against the Coburn for Senate ("Committee"). The complainant alleged that, based on the Audit Report, the Committee violated the Federal Election Campaign Act by failing to itemize 18% of the contributions it received during the 2004 election cycle. Additionally, the Committee allegedly failed to file 48-Hour contribution notices on 202 last-minute contributions.¹

The Committee responded by noting that the Audit Report and its findings did not require the Committee to further amend its reports, since it took corrective action prior to the beginning of the audit. Furthermore, the Committee paid an administrative fine related to the 48-Hour notice violations in the amount of \$33,170.

¹ Although not alleged in the complaint, the Audit Report issued by the Commission noted that the Committee received \$22,100 in excessive contributions. The Audit Report also noted that the Committee refunded all the excessive contributions, but the refunds were not timely made.

1 In this case the Committee filed amended reports substantially correcting its reporting
2 errors prior to the initiation of the audit. Furthermore, the Committee paid an administrative
3 fine related to its failure to timely file its 48-Hour notices. Thus, there are no remaining
4 issues arising from the Audit Report warranting Commission Enforcement action.²

5 In light of the fact that the Committee resolved its reporting issues during the course
6 of the Audit and through the administrative fine process the Office of General Counsel
7 believes that the Commission should exercise its prosecutorial discretion and dismiss the
8 matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).


9 **RECOMMENDATION**

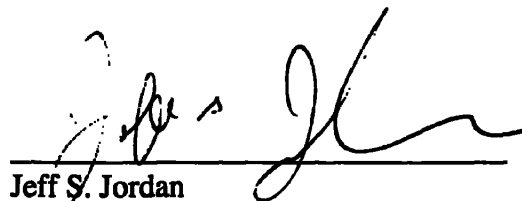
10 The Office of General Counsel recommends that the Commission dismiss MUR
11 5900, close the file effective two weeks from the date of the Commission vote, and approve
12 the appropriate letters. Closing the case as of this date will allow CELA and General Law
13 and Advice the necessary time to prepare the closing letters and the case file for the public
14 record.

15 Thomasenia P. Duncan
16 General Counsel

17
18 7/10/07
19 Date

20 BY:

21 
22 Gregory R. Baker
23 Special Counsel
24 Complaints Examination
& Legal Administration



Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration

Attachments:

Audit Report for Coburn for Senate Committee, dated January 9, 2007
Narrative in MUR 5900

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Report of the Audit Division on Coburn For Senate Committee

March 11, 2004 – December 31, 2004

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Campaign (p. 2)

Coburn for Senate Committee (CSC) is the principal campaign committee of Thomas A. Coburn, Republican candidate for the U.S. Senate from the state of Oklahoma and is headquartered in Muskogee, Oklahoma. For more information, see chart on the Campaign Organization, p.2.

Financial Activity (p. 2)

• Receipts	
○ Individuals	\$ 3,898,597
○ Political Party Committees	65,144
○ Other Political Committees	793,488
○ Transfer From Other Authorized Committees	352,437
○ Refunds/Rebates	2,722
○ Total Receipts	\$ 5,112,387
• Disbursements	
○ Operating Expenditures	\$ 5,030,521
○ Contribution Refunds	19,100
○ Other Disbursements	7,500
○ Total Disbursements	\$ 5,057,121

Findings and Recommendations (p. 3)

- Itemization of Contributions from Individuals (Finding 1)
- Failure to File 48-Hour Notices (Finding 2)
- Receipt of Contributions that Exceed Limits (Finding 3)

¹ 2 U.S.C. §438(b).

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Part I

Background

Authority for Audit

This report is based on an audit of Coburn for Senate Committee (CSC), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

Scope of Audit

Following Commission approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The consistency between reported figures and bank records.
5. The completeness of records.
6. Other committee operations necessary to the review.

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Part II

Overview of Campaign

Campaign Organization

Important Dates	Coburn for Senate committee
• Date of Registration	March 16, 2004
• Audit Coverage	March 11, 2004 – December 31, 2004
Headquarters	Muskogee, Oklahoma
Bank Information	
• Bank Depositories	1
• Bank Accounts	1 Checking
Treasurer	
• Treasurer When Audit Was Conducted	Wade A. Stubbs
• Treasurer During Period Covered by Audit	Wade A. Stubbs
Management Information	
• Attended FEC Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash on hand @ March 11, 2004	\$ 0
o Individuals	3,898,5979
o Political Party Committees	65,144
o Other Political Committees	793,488
o Transfers From Other Authorized Committees	352,437
o Refunds/Rebates	2,722
Total Receipts	\$5,112,387
o Operating Expenditures	5,030,521
o Contribution Refunds	19,100
o Other Disbursements	7,500
Total Disbursements	\$5,057,121
Cash on hand @ December 31, 2004	\$ 55,266

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Part III

Summaries

Findings and Recommendations

Finding 1. Itemization of Contributions from Individuals

Contributions received from individuals were reviewed on a sample basis. The review indicated that approximately 18% of such contributions which aggregated in excess of \$200 were not itemized on CSC's reports. CSC filed amended reports which materially corrected the itemization errors. The Audit staff recommended that CSC submit any written comments it considers relevant. In response, CSC stated that it has instituted procedures to prevent similar issues in future reporting. (For more detail, see p. 4)

Finding 2. Failure to File 48-Hours Notices

CSC failed to file 48-hour notices for 202 contributions totaling \$349,100. The Audit staff recommended that CSC provide evidence that the 48-hour notices were timely filed or submit any written comments it considers relevant. In response, CSC stated that they have restructured their staff and procedures to ensure future compliance. (For more detail, see p. 5)

Finding 3. Receipt of Contributions that Exceeds Limits

CSC accepted contributions from political action committees that exceeded the limitation by \$22,100. All of the excessive contributions were refunded; however, the refunds were not timely. The Audit staff recommended that CSC submit any written comments it considers relevant. In response, CSC stated it has instituted procedures to ensure that excessive contributions are handled timely. (For more detail, see p. 6)

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Part IV

Findings and Recommendations

Finding 1. Itemization of Contributions from Individuals

Summary

Contributions received from individuals were reviewed on a sample basis. The review indicated that approximately 18% of such contributions which aggregated in excess of \$200 were not itemized on CSC's reports. CSC filed amended reports which materially corrected the itemization errors. The Audit staff recommended that CSC submit any written comments it considers relevant. In response, CSC stated that it has instituted procedures to prevent similar issues in future reporting.

Legal Standard

When to Itemize. Authorized candidate committees must itemize:

- Any contribution from an individual if it exceeds \$200 per election cycle, either by itself or when aggregated with other contributions from the same contributor; and
- Every contribution from any political committee, regardless of the amount 2 U.S.C. §434(b)(3)(A), (B) and (D).

Definition of Itemization. Itemization of contributions received means that the recipient committee discloses, on a separate schedule, the following information:

- The amount of the contribution;
- The date of receipt (the date the committee received the contribution);
- The full name and address of the contributor;
- In the case of contributions from individual contributors, the contributor's occupation and the name of his or her employer; and
- Election cycle-to-date total of all contributions from the same contributor. 11 CFR §§100.12 and 104.3(a)(4) and 2 U.S.C. §434(b)(3)(A) and (B).

Facts and Analysis

Contributions received from individuals were reviewed on a sample basis. The review indicated that approximately 18% of the contributions which aggregated in excess of \$200 were not itemized on CSC reports. After CSC received notice of the audit, it filed amended reports. These amendments materially corrected the itemization errors.

This matter was discussed at the exit conference. CSC representatives stated it changed to a different software application during the campaign and much of the data was omitted by the input staff, thereby, affecting contributions requiring itemization.

Interim Audit Report Recommendation and Committee's Response

The Audit staff recommended that CSC submit any written comment it considers relevant.

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CSC stated that prior to the arrival of the Audit staff, the Committee conducted its own internal audit, then corrected and amended all reports. This was done to expedite the FEC audit process and in the interest of full disclosure, to correct the public record as soon as possible. Further, CSC instituted procedures to prevent similar issues in future reports.

Finding 2. Failure to File 48-Hour Notices

Summary

CSC failed to file 48-hour notices for 202 contributions totaling \$349,100. The Audit staff recommended that CSC provide evidence that the 48-hour notices were timely filed or submit any written comments it considers relevant. In response, CSC stated that they have restructured their staff and procedures to ensure future compliance.

Legal Standard

Last-Minute Contributions (48-Hour Notice). Campaign committees must file special notices regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate. 11 CFR §104.5(f).

Facts and Analysis

The Audit staff reviewed contributions of \$1,000 or more that were received during the 48-hour notice filing periods for the primary and general elections. CSC failed to file 48-hour notices for 202 contributions totaling \$349,100; (13 contributions totaling \$29,500 during the primary election, and 189 contributions totaling \$319,600 during the general election). CSC indicated that the failure to file these 48-hour notices were an oversight due to inadequate staffing.

Interim Audit Report Recommendation and Committee's Response

The Audit staff recommended that CSC provide:

- documentation to demonstrate the contributions in question were properly included in 48-hour notices; or,
- documentation establishing the contributions were not subject to 48-hour notification; and/or,
- any written comments it considers relevant.

CSC acknowledged that it failed to file several 48-hour notices. CSC stated it understands the importance of the 48-hour notices and has restructured its staff and procedures to ensure future compliance in filing all reports.

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Finding 3. Receipt of Contributions that Exceed Limits

Summary

CSC accepted contributions from political action committees that exceeded the limitation by \$22,100. All of the excessive contributions were refunded; however, the refunds were not timely. The Audit staff recommended that CSC submit any written comments it considers relevant. In response, CSC stated it has instituted procedures to ensure that excessive contributions are handled timely.

Legal Standard

A. Authorized Committee Limits: An authorized committee may not receive more than a total of \$2,000 per election from any one person or \$5,000 from a multi-candidate political committee per election. 2 U.S.C. §441a(a)(1)(A), 11 CFR §§110.1(a) and (b) and 110.2(a) and (b).

B. Handling Contributions That Appear Excessive. If a committee receives a contribution that appears to be excessive, the committee must either:

- return the questionable contribution to the donor; or
- deposit the contribution into its campaign depository and keep enough money on account to cover all potential refunds until the legality of the contribution is established. 11 CFR §103.3(b)(3) and (4).

Facts and Analysis

CSC accepted contributions from political action committees that exceeded the limitation by \$22,100. All of the excessive contributions were refunded; however, the refunds were not timely. CSC did not deposit the excessive portions into a separate account but did maintain sufficient funds to make the necessary refunds. This matter was discussed at the exit conference. In response, CSC reiterated that refunds were made but not within the required number of days.

Interim Audit Report Recommendation and Committee's Response

The Audit staff recommended that CSC submit any written comments it considers relevant. CSC stated that it has instituted procedures to ensure that excessive contributions are handled timely.

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4 **MUR 5900**

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6 **Complainant:** Melanie Sloan on behalf of
7 Citizens for Responsibility and Ethics in Washington
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9 **Respondents:** Coburn for Senate Committee and
10 Wade A. Stubbs, as Treasurer
11

12
13 **Allegations:** The complainant, Citizens for Responsibility and Ethics in Washington
14 ("CREW"), provided an Audit Report approved by the Commission on January 9, 2007
15 as the basis for its complaint against the Coburn for Senate ("Committee"). The
16 complainant alleged that, based on the Audit Report, the Committee violated the Federal
17 Election Campaign Act by failing to itemize 18% of the contributions it received during
18 the 2004 election cycle. Additionally, the Committee allegedly failed to file 48-Hour
19 contribution notices on 202 last-minute contributions.
20

21 **Response:** The Committee responded by noting that the Audit Report and its findings
22 did not require the Committee to further amend its reports, since it took corrective action
23 prior to the beginning of the audit. Furthermore, the Committee paid an administrative
24 fine related to the 48-Hour notice violations in the amount of \$33,170.
25

26 **General Counsel's Note:** The complainant in this matter has merely attached the Audit
27 Report and converted it into a complaint.
28

29 As noted in the response,
30 the Committee filed its amended reports prior to the Audit and paid a substantial penalty
31 related to its 48-Hour notice violations. Thus, this Office recommends that the matter be
32 dismissed.
33

34 **Date complaint filed:** February 15, 2007
35

36 **Response filed:** March 14, 2007

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